

**TITLE 14. Fish and Game Commission**  
**Notice of Proposed Emergency Changes in Regulations**

**NOTICE IS HEREBY GIVEN** that the Fish and Game Commission (Commission), pursuant to the authority vested by sections 200, 202, 205, 220, 240, 316.5, and 2084, of the Fish and Game Code (FGC) and to implement, interpret or make specific sections 200, 202, 205, 316.5, and 2084 of said Code, proposes to amend Section 27.80, Title 14, California Code of Regulations (CCR), relating to Ocean Salmon Sport Fishing.

**Informative Digest/Policy Statement Overview**

The Pacific Fishery Management Council (PFMC) annually reviews the status of west coast salmon populations. As part of that process, it recommends ocean salmon fisheries regulations aimed at meeting biological and fishery allocation goals specified in law or established in the Salmon Fishery Management Plan (FMP). These recommendations coordinate west coast management of sport and commercial ocean salmon fisheries in the Federal fishery management zone (3 to 200 miles offshore) off the coasts of Washington, Oregon, and California. These recommendations are subsequently implemented as ocean fishing regulations by the National Marine Fisheries Service (NMFS).

California's sport fishing regulations will need to conform to the new Federal regulations to achieve optimum yield in California. The Fish and Game Commission (Commission) adopts regulations for the ocean salmon sport fishery in State waters (zero to three miles offshore) which are consistent with Federal fishery management goals and are effective at the same time.

Emergency regulatory action by the Commission is needed to protect Sacramento River Fall Chinook (SRFC) in 2008. The SRFC stocks are projected by the PFMC to be at a record low 2008 abundance level. Previously, the 2008 preseason forecast was projected at 68,400 SRFC adults. During the PFMC's March meeting in Sacramento, the PFMC Salmon Technical Team (STT) provided an updated estimate of SRFC Chinook escapement based upon new information. The revised projection lowers the 2008 SRFC abundance forecast to 54,570 SRFC adults (See Figure 1). This new estimate assumes no further fishing in 2008 and indicates that the new projected 2008 SRFC escapement is much lower than the previous estimate.

The NMFS has determined that poor ocean conditions are a major factor of the low 2008 SRFC abundance. The NMFS also expects these poor conditions to continue affecting subsequent years' SRFC escapements in the near future. The NMFS announced at the PFMC March meeting that a Federal emergency action will be necessary to set aside the FMP conservation goal before allowing any further harvest of SRFC. The fisheries affected are the commercial and sport ocean salmon fisheries between Cape Falcon in northern Oregon and the U.S./Mexico Border and the salmon sport fisheries in the Central Valley river system.

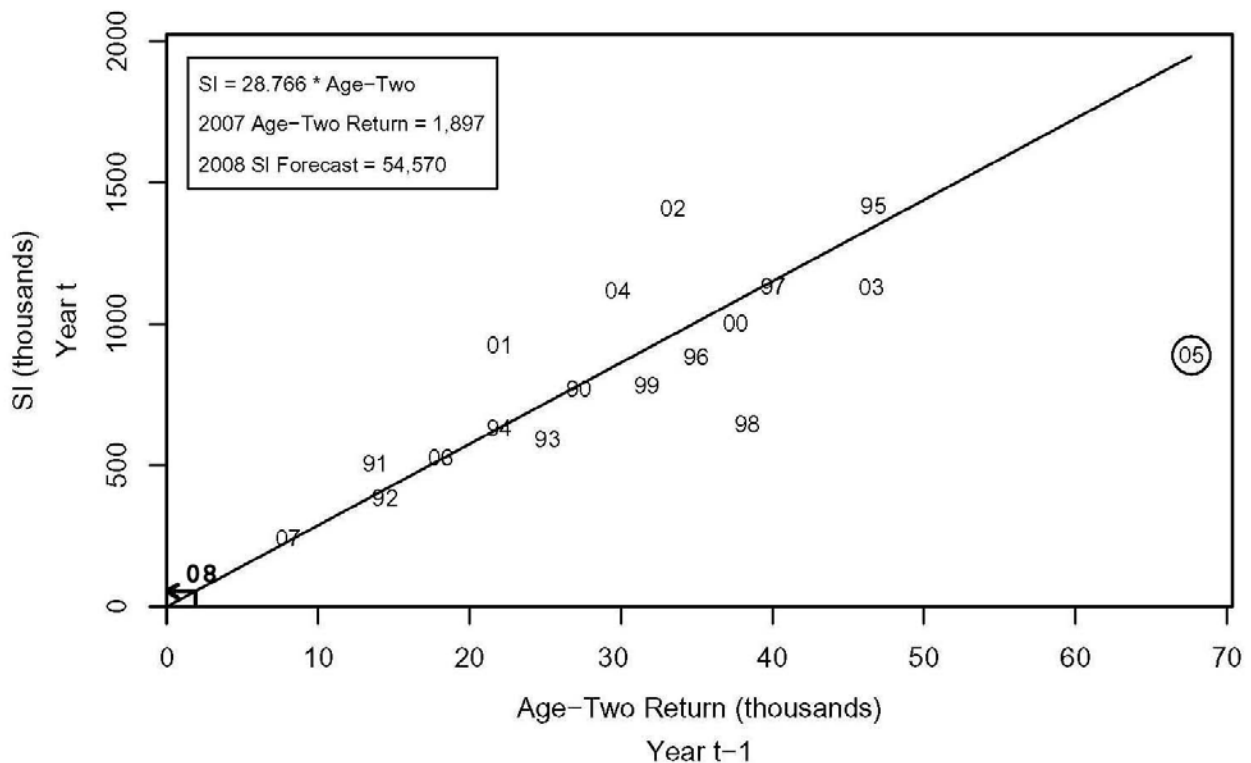


FIGURE 1. Regression estimator for Sacramento Index (SI) based on previous year's river return of age-two Sacramento River Fall Chinook, 1990-2007 with 2005 data point omitted. SI is calculated as the Sacramento River Fall Chinook adult escapement added to the Chinook commercial and sport ocean harvest below Cape Falcon in Oregon for the present year.

The post-August 2007 commercial and sport ocean salmon fisheries have already harvested 4,000 SRFC from the 2008 abundance and 16,000 SRFC are needed to meet the annual egg take goal at the Sacramento River federal and state mitigation hatcheries. Also the 2008 SRFC adult abundance is expected to be well below the lower boundary of the FMP conservation goal of 122,000 to 180,000 SRFC adult escapement (See Figure 2).

With this new information, the PFMC voted to recommend closure of all ocean salmon fisheries presently open and delay any additional April openings until the final 2008 federal regulations are enacted on May 1, 2008, to provided maximum protection for SRFC. This in season regulatory action will be enacted by the NMFS prior to April 1, 2008.

The proposed regulatory action amends Section 27.80, Title 14, CCR, which describes 2008 opening dates for recreational ocean salmon fishing in the ocean waters off California. Current regulations allowed the harvest of Chinook salmon between Horse Mountain and Point Arena after February 16, 2008, and the area below Point Arena to the U.S/Mexico border is scheduled to open for salmon fishing on April 5, 2008.

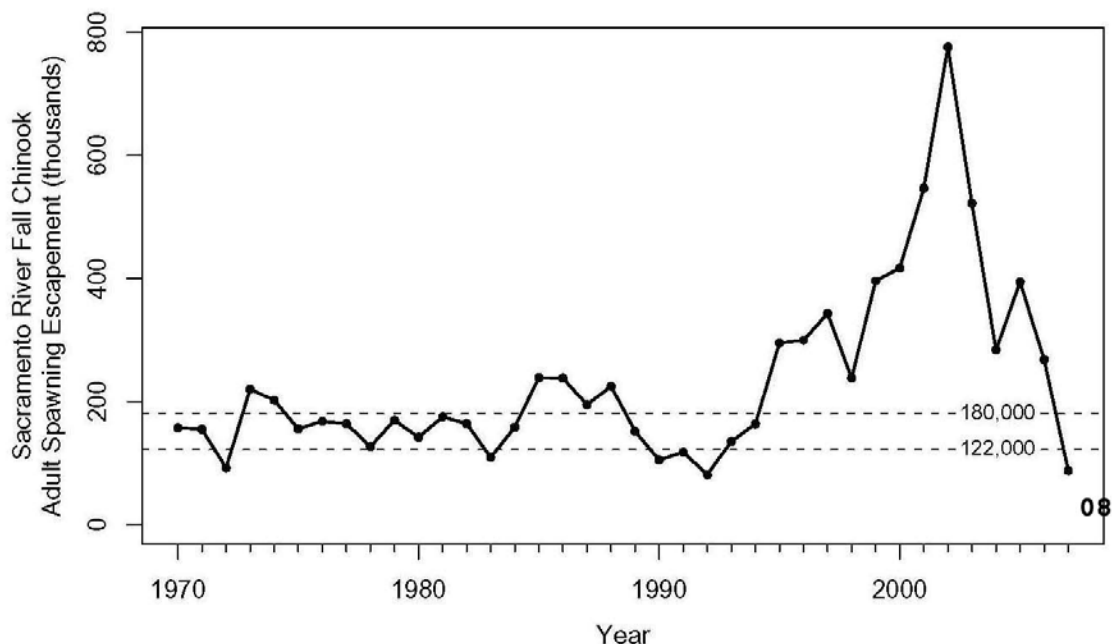


FIGURE 2. Spawning escapements of adult Sacramento River fall Chinook, 1970-2007, and the FMP conservation objective range for the stock of 122,000 to 180,000 adult fish.

The proposed changes will close the area between Horse Mountain and Point Arena on March 31, 2008 (or as soon thereafter as the regulations are approved) and the area below Point Arena to the U.S/Mexico border will remain closed until further action by the PFMC and Commission at their April 2008 meetings.

This emergency action is also necessary to conform Section 27.80, Title 14, CCR, to the federal regulations to avoid a substantial and adverse effect on the FMP and the Sacramento River Fall Chinook. In order to continue having state jurisdiction over this fishery pursuant to the Magnuson Fisheries Conservation and Management Act (16 U.S.C. Section 1856), the state is obligated to conform to the federal regulations.

The PFMC approved three regulatory options for public review on March 14, 2008, as follows: a very limited commercial and sport fishing after May 18, no fishing after March 31 with a research project on salmon distribution in ocean waters, and no fishing after March 31 along the entire Pacific coast.

The final PFMC 2008 recommendation will be adopted on April 11, 2008 in Seattle, Washington, and these recommendations are subsequently implemented as federal ocean salmon fishing regulations by the NMFS on May 1, 2008. The Commission will adopt regulations for the ocean salmon sport fishery in state waters on April 15, 2008 which is presently undergoing public review via the Office of Administrative Law's Notice ID #Z08-0213-03.

### **Section 240 Finding**

Pursuant to Section 240 of the Fish and Game Code, the Commission must make the finding that the adoption of this regulation is necessary for the immediate conservation, preservation or

protection of birds, mammals, reptiles, or fish, including, but not limited to, any nests or eggs thereof.

### **Public Comments on Proposed Emergency Regulations**

Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6.

In order to be considered, public comments on proposed emergency regulations must be submitted in writing to the Office of Administrative Law (OAL), 300 Capitol Mall, Room 1250, Sacramento, CA 95814; AND to the Fish and Game Commission, 1416 Ninth Street, Room 1320, Sacramento, CA 95814, or via fax to (916) 653-5040 or via e-mail to [fgc@fgc.ca.gov](mailto:fgc@fgc.ca.gov). Comments must identify the emergency topic and may address the finding of emergency, the standards set forth in sections 11346.1 and 11349.1 of the Government Code and Section 240 of the Fish and Game Code. Comments must be received within five calendar days of filing of the emergency regulations. Please refer to OAL's website ([www.oal.ca.gov](http://www.oal.ca.gov)) to determine the date on which the regulations are filed with OAL.

### **Impact of Regulatory Action**

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following initial determinations relative to the required statutory categories have been made:

- (a) Significant Statewide Adverse Economic Impact Directly Affecting Business, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed changes are necessary for the continued preservation of the resource and therefore the prevention of adverse economic impacts.

- (b) Impact on the Creation or Elimination of Jobs within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California: None

- (c) Cost Impacts on a Representative Private Person or Business:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

The fiscal impacts are minimal or unknown at this time and will be discussed fully in rulemaking OAL ID #Z08-0213-03 once the final PFMC action has been recommended in April.

- (e) Nondiscretionary Costs/Savings to Local Agencies: None
- (f) Programs Mandated on Local Agencies or School Districts: None
- (g) Costs Imposed on any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4: None
- (h) Effect on Housing Costs: None

Effect on Small Business

It has been determined that the adoption of these regulations may affect small business.

Consideration of Alternatives

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed action.

FISH AND GAME COMMISSION

Dated: March 19, 2008

John Carlson, Jr.  
Executive Director